

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AREZOU MANSOURIAN, LAUREN MANCUSO,  
NANCY NIEN-LI CHIANG, and  
CHRISTINE WING-SI NG, et al.,

CIV S-03-2591 FCD PAN

Plaintiffs,

v.

ORDER

BOARD OF REGENTS OF THE UNIVERSITY  
OF CALIFORNIA AT DAVIS, et al.,

Defendants.

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On December 28, 2005, the parties filed a stipulation and lodged a proposed protective order that would permit defendants to file under seal a motion to compel compliance with a subpoena for the medical records of plaintiff Nancy Nien-Li Chiang.

For the reasons set forth below, the requested protective order is denied.

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1           There is no public interest in documents exchanged  
2 between the parties in pretrial discovery that are not filed with  
3 the court. Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33  
4 (1984) ("[m]uch of the information that surfaces during pretrial  
5 discovery may be unrelated, or only tangentially related, to the  
6 underlying cause of action"). Thus, the parties may do as they  
7 agree among themselves without permission or approval of the  
8 court regarding classification of such documents as confidential.

9           The public right of access surfaces, however, when  
10 parties seek to seal documents filed in conjunction with a  
11 discovery motion and ripens when documents are filed in  
12 conjunction with a dispositive motion or at trial.

13           In this circuit, the court starts with a strong  
14 presumption in favor of access to court records in civil cases.  
15 Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th  
16 Cir. 2003) (citing Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th  
17 Cir. 1995)).

18           When parties make a discovery motion that requires  
19 consideration of documents, a public interest in understanding  
20 the proceedings arises and must be balanced against the interests  
21 of the parties in avoiding the disclosure of embarrassing  
22 information, libel, infringement of trade secrets and the like.  
23 Phillips v. General Motors, 307 F.3d 1206, 1212 (9th Cir. 2002).  
24 If a court finds specific harm will result from public disclosure  
25 of information, then it balances the public and private interests  
26 to decide whether a protective order is necessary. Phillips, 307

1 F.3d at 1211; Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483  
2 (3d Cir. 1995).

3 When parties rely upon and file documents to support a  
4 dispositive motion requiring a decision on the merits of a  
5 pending dispute, the public interest in access to court records  
6 grows stronger, see Foltz v. State Farm Mutual Automobile  
7 Insurance Company, 331 F.3d 1122, 1135 (9th Cir. 2002) (citing  
8 Rushford v. The New Yorker Magazine, 846 F.2d 249, 252 (4th Cir.  
9 1988)), and is at its zenith in the context of civil trial,  
10 Hagestad, 49 F.3d 1424.

11 Significant matters of public interest are presented by  
12 this case, even at the discovery phase. The cost of public  
13 education and the University's discretion in spending public  
14 funds are currently matters of substantial political debate and  
15 scrutiny. These parties ask the court merely to accede to  
16 plaintiff's request her psychological records remain private  
17 notwithstanding that plaintiff seeks monetary damages for  
18 "emotional distress, lost self-esteem and confidence [and]  
19 humiliation" based on her claim the University of California at  
20 Davis violated her civil rights by terminating the women's  
21 wrestling program and its attendant benefits including academic  
22 tutoring and laundry services. The public's interest in the  
23 University's proper use or misuse of public funds is extremely  
24 high and outweighs the plaintiff's privacy interests in this  
25 action which she and others initiated.

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1 Accordingly, the request for protective order is denied.  
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So ordered.

3 Dated: January 4, 2006.

4 /s/ Peter A. Nowinski  
5 PETER A. NOWINSKI  
6 Magistrate Judge  
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